

**No. PD-0722-19**

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COURT OF CRIMINAL APPEALS  
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**In the Texas Court of Criminal Appeals  
Austin, Texas**

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BRADEN DANIEL PRICE Appellant

VS.

THE STATE OF TEXAS Appellee

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On Petition for Discretionary Review  
State's Brief on the Merits  
From the Fourth Court of Appeals, San Antonio, Texas  
No.04-18-00628-CR  
And the 175<sup>th</sup> Judicial District Court of Bexar County, Texas  
Cause No. 2017-CR-10496

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## NAME OF THE PARTIES

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2. Mr. Ronald P. Guyer *represented Mr. Price in a trial court in all proceedings. Mr. Guyer's address is :*  
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## **STATEMENT OF THE CASE**

### **1. Nature Of The Case.**

This is an appeal in a criminal case. Mr. Price appealed the judgment of conviction, and sentence imposed, following his plea of guilty. Mr. Price reserved the right to appeal the denial to appeal the denial of his motion to suppress evidence seized and statements' obtained, as authorized under ART.44.02, TEX.CODE CRIM.PROC. The Fourth Court of Appeals reversed the conviction of Mr. Price based on the only issue presented. The legality of a warrantless search of Mr. Price's luggage.

### **2. Procedural History In The Court Below.**

Braden Daniel Price was charged with indictment with possession marijuana, a controlled substance, in an amount of 50 lbs to 2000 lbs (56lbs) in violation of TEX. HEALTH & SAFETY CODE 481.121 (b)(5) prior to trial Mr. Price moved to suppress all physical evidence seized and statements obtained based on an unlawful search of his luggage. ( Cr 39-43 ) based on an unlawful search of his suitcase. On February 3, 2018 a hearing on the motion was held before the Honorable Catherine Torres-Sthal Judge of the 175<sup>th</sup> Judicial District .(MTS pp1-34)



Judge Torres- Sthal denied the motion on May 3,2018 with written findings of Fact and Conclusion of Law. ( Cr 36-37 ) July 17,2018 Mr. Price pleaded guilty to the charge reserving his right to appeal the denial of his motion to suppress evidence. (C.R.,vol 4 pp 4-8) Judge Torres Sthal accepted Mr. Price's plea. Sentencing hearing was conducted before Judge Torres Sthal on August 22,2018. Mr. Price was sentenced to ten years imprisonment suspended and placed on community supervision for a period of ten years and a fine of \$1,500.00.(Plea pp 14-16) The Fourth Court of Appeals, San Antonio, Texas reversed the ruling of Judge Torres, 175<sup>th</sup> Judicial District Court.

### **STATEMENT REGARDING ORAL ARGUMENT**

Counsel request oral argument in Mr. Price's behalf if it would be helpful to the Court. This case involves a challenge to the search of Mr. Price's luggage without a search warrant.

### **ISSUE FOR REVIEW**

The Fourth Court correctly determined that the Trial Court reversibly erred in denying Mr. Price's Motion To Suppress the search of his luggage, contrary to the Fourth And Fourteenth Amendments to the United States Constitution, and article 1, section 9 of the Texas Constitution.

## STATEMENT OF FACTS

Detective Carlos Bishop received information "from a reliable and credible source" who stated that "AP may be traveling to the San Antonio International Airport with a large quantity of illegal narcotics." Detective Bishops confirmed that the AP was traveling to San Antonio on Southwest Flight 4624 from Las Vegas. When the plane landed, Officer C.J. James ran his drug detection dog, "Riley," around the suitcases checked under Braden Price's name. Riley positively alerted for the presence of a controlled substance. Officers then observed Price retrieve the two suitcases from the conveyer belt. According to the report, Price exited the airport "at such a quick pace he was nearly running." The officers followed Price outside, stopped him, and identified themselves as San Antonio police officers. The officers repeatedly advised Price that they wished to speak with him about his bags. In response, Price's eyes widened and he responded "what?" after each request. Price was handcuffed and taken to an Airport Police office located in the airport. Once in the office, Bishop advised Price of his *Miranda* rights. Price invoked his right to silence and his right to counsel. Bishop then informed Price that he had "probable cause to believe that [he] was in fact transporting illegal narcotics." which gave him probable cause to open the suitcases. Bishop opened the bags without a warrant and without Price's consent. More than 56 pounds 59 gross weight of hydroponic marihuana was found inside, packaged

in vacuum sealed bags. Bishop field-tested a sample from the sealed bags which tested positive for marihuana. Booking slips were prepared. Price was transported by Airport Security Officer Ricardo Flores to 401 South Frio in San Antonio, Texas, for booking into the jail.

### SUMMARY OF ARGUMENT

Law enforcement officers searched the luggage of Mr. Price without a search warrant. The Supreme Court of the United States held that law enforcement officers must obtain a warrant to search in luggage the circumstances of Mr. Price's arrest.

### STANDARD OF REVIEW

On review of a trial court's ruling on a motion to suppress, this Court gives almost total deference to the court's determination of the historical facts that the record supports, especially when those fact findings are based on an evaluation of the witnesses' credibility and demeanor, under an abuse of discretion standard. *Turrubiate v. State*, 393 S.W.3d 147, 150 (Tex.Crim.App. 2013); *Amador v. State*, 221 S.W.3d 666, 673 (Tex.Crim.App. 2007); *Guzman v. State*, 955 S.W.2d 85, 89 (Tex.Crim.App. 1997); *Rodriguez v. State*, 2015 WL 635481 at\*2 (Tex.App. - Corpus Christi-Edinburg, October 22, 2015). The same level of deference is accorded the trial court's rulings on



mixed questions of law and fact if those decisions turn on the credibility and demeanor of the witnesses. *Id*

## ARGUMENT AND AUTHORITIES

Even if the arrest was lawful, Mr. Price's luggage could not be opened in the absence of his consent or a search warrant. Based on the positive alert for drugs by the detecting dog, officers had probable cause to search the luggage and could detain it while a warrant was obtained. *Foster v. State*, 101 S.W.3d 492,496 (Tex.App. - Houston [1st Dist.] 2002)(dog sniff of container positive for drugs provides probable cause to search); *United States v. Jacobsen*, 466 U.S. 109, 114(1984) (upholding seizure of package to prevent loss or destruction of contraband, noting that the "Fourth Amendment requires that (the police] obtain a warrant before examining contents of such a package"); *United States v. Cadwick*, 433 U.S. 1, 15 (1977)(where police have probable cause to believe that an arrestee's "luggage or other property seized at the time of the arrest" contains contraband or evidence of a crime, the warrantless search of such property violates the Fourth Amendment); *Segura v. United States*, 468 U.S. 796,806 (1984)(ordinarily, once there is a seizure and custodial retention of a container by the police, a *neutral*

*Judicial officer must authorize any subsequent search upon a showing of probable cause*); *Katz v. United States*, 389 U.S. 347, 357 (1967)

(searches "conducted outside the judicial process, without prior approval by a judge or magistrate, are *per se* unreasonable under the Fourth

Amendment"); *accord Arizona v. Gant*, 556 U.S. 332, 338 (2009). To be sure, there are exceptions to the warrant requirement, but it is the State's

burden to prove an exception. *Jackson v. State*, 2016 WL 5956070 at\* 1

(Tex.App. - Texarkana, October 13, 2016)(not designated for publication)

(citing *inter alia State v. Steelman*, 93 S.W.3d 102, 106 n.5

(Tex.Crim.App. 2002). One of these exceptions is a suspect's voluntary

consent to the search of his possessions. *Illinois v. Rodriguez*, 497 U.S.

177, 181 (1990); *Love v. State*, 2017 WL 5182268 at \*1 (Tex.App. - Waco,

November 8, 2017)(not designate for publication)(citing *State v. Rodriguez*,

521 S.W.3d 1, 19 (Tex.Crim.App. 2017). Another exception is a search

incident to a lawful arrest. *Arizona v. Gant*, 556 U.S. at 339. This exception

derives from interests in officer safety and evidence preservation that are

typically implicated in arrest situations. Under the "incident to arrest"

exception, "police may search ... only the space within an arrestee's

'immediate control,' meaning 'the area from within which he might gain possession of a weapon or destructible evidence.'" *Id.* at 335 (quoting *Chime/ v. California*, 395 U.S. 752, 763 (1960). But, "[o]nce law enforcement officers have [exclusive control over] luggage or other personal property not immediately associated with the person of the arrestee ... , and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest" and a warrant must be obtained. *United States v. Chadwick*, 433 U.S. at 15 (1977); *abrogated on other grounds in California v. Acevedo*, 500 U.S. 565 (1991). And, it is axiomatic that a search incident to a lawful arrest may not precede the arrest and serve as part of its justification. *Sibron v. New York*, 392 U.S. 40, 66 (1968). Courts also recognize an "inventory search" as an exception to the warrant requirement. *Illinois v. Lafayette*, 462 U.S. 640, 648 (1983). The inventory search exception permits a station house search of an arrestee's personal effects as part of routine procedure incident to incarcerating an arrested person, including any container or article in his possession. *Id.* An inventory search must be conducted in accordance with established



inventory procedures. *Id.* None of these recognized exceptions apply in Mr. Price's case. Here, the luggage was seized by law enforcement after Mr. Price was handcuffed outside the airport and taken to the Airport Security office. The luggage was then entirely in the custody and control of law enforcement. The record is uncontroverted that Detective Bishop did not request Mr. Price's consent to the search of his luggage, nor did Mr. Price give it. Instead, Detective Bishop simply informed Mr. Price that he had probable cause to search the luggage, and immediately opened it. This was not a search incident to Mr. Price's arrest, nor an inventory search of his property at the time he was booked into the jail as the luggage did not accompany him there. In this case, there can be no doubt that Detective Bishop was required to obtain a warrant to search the suitcases but failed to obtain one, rendering the search constitutionally unlawful. This being so, the drug evidence seized from the suitcases must be suppressed from evidence.

## CONCLUSION

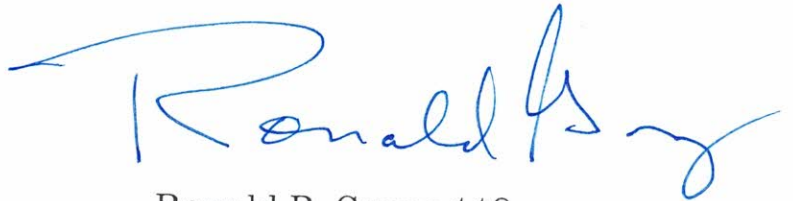
Mr. Price was arrested at the San Antonio airport. There can be no doubt that Mr. Price was arrested , not temporarily detained. His luggage was seized by the police he was placed in handcuffs and taken to the Airport Security office. Based on the positive alert by the K-9, Riley, the officers had probable cause to arrest. But once the luggage was in their custody and control, they were required to obtain a search warrant to open and search the luggage. Mr. Price did not consent to the search of the luggage. Nor do any other possible exceptions to the warrant requirement apply. Because law enforcement searched the suitcases seized from Mr. Price without a warrant, both state and federal constitutional provisions were violated. Accordingly, the marihuana seized from the luggage must be suppressed from evidence at the trial of this cause.

## MR. PRICE WAS HARMED

Because Mr. Price's constitutional rights were violated, harm is evaluated under TEX. R. APP. P. 44.2(a). Under RULE 44.2(a), this Court must reverse the judgment unless it determines beyond a reasonable doubt that the trial court's error did not contribute to Mr. Price's conviction of punishment. The denial of Mr. Price's motion to suppress was harmful because it "undoubtedly contributed in some measure to the State's leverage in the plea bargaining process and may well have contributed to [Mr. Price's] decision to relinquish his constitutional rights of trial and confrontation in exchange for a favorable punishment recommendation." *Johnson* at \*5 (quoting *Castleberry v. State*, 100 S.W.3d 400,404 (Tex.App. - San Antonio, 2002).

## PRAYER

FOR ALL OF THESE REASONS, BRADEN PRICE respectfully prays  
that this Honorable Court will affirm the decision of the Fourth Court of  
Appeals.

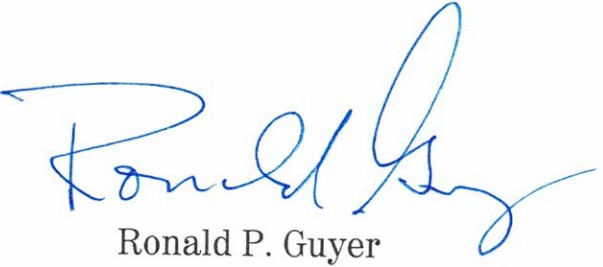


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## CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of Mr. Price's brief through  
Texas eLaw Services on Bexar County District Attorney's Office 300  
Dolorosa Ste 4025 San Antonio, Tx

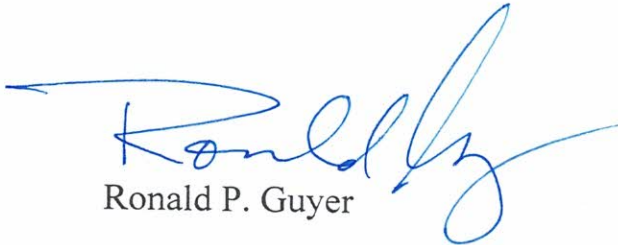


Ronald P. Guyer

## CERTIFICATE OF COMPLIANCE

1. Mr. Price's brief complies with the length requirements set out in TEX.R  
APP.P.9.4(I) (1) & (2) (B)

2. Mr. Price's brief complies with the typeface requirements of  
TEX.R.APP.P.9.4r



Ronald P. Guyer